751 [443] Among the Ait Waryager, when an infant has become forty
852 days old, its crown is smeared with henna as a protection against fleas,
754 lice, and the evil eye, and this is frequently repeated until it grows older; and they apply the same colouring matter to the chests and feet of their greyhounds, which they are the more anxious to preserve from envious looks as they have not many of them.

754 [444] Written charms are also frequently used against the evil eye.
[492] Horses and mules have a small case of brass or copper containing passages of the Koran hung as a charm round their necks (Fez, Ait Waryager).

695 [506] There are persons who swear in a state of nakedness, and a reason for their doing so may be fear lest otherwise the self-imprecation should cling to their clothes. It is believed that the oath of a naked person who is innocent will affect the other party, who made him swear (Tangier, Ait Waryager, Aglu); and the supposition that the absence of clothes is looked upon as a precaution derives support from the fact that in the Hiaina the person who has sworn, and all the people who live with him in the same house, have their clothes washed on the day when the oath was taken so as to rid them of the bas which is sticking to them.

[513] Among the Ait Waryager a person who is accused of having stolen a thing the value of which does not exceed a dollar is acquitted if he alone swears to his innocence; but if the stolen object is of higher value, four respectable men chosen from among his kinsmen have to swear with him. The same number of conjurators is necessary in the case of homicide, but their oaths only effect a suspension of the blood-feud, which will sooner or later be waged against the suspected individual. Among the Ait Temsaman the conjurators, including the offender, must be twelve men both in the case of homicide and theft, and they are all chosen by the injured party.

[515] Among the Ait Waryager, when two persons are quarrelling, one of them may in his rage make a vow to kill somebody or to marry a certain girl or to do something else, saying, "May my religion be forbidden to me and the holy places of Mecca not be forbidden to the Jews, if I do not do this or that". This vow is looked upon as most
627 sacred since it implies a conditional curse on Islam. Among the
578 same tribe an avenger of blood sometimes makes the vow that he will
266 eat the liver or the tongue of his enemy; in such a case he goes to the

798 front of men[27] are also rejected, as are ululations made by the women
585 on behalf of the groom when he enters the bride's room. (In the Bni Hmid[28], the bride is carried on the shoulders of volunteers to the groom's house; she does not, as elsewhere, ride a mule. In the same tribe, on the first day of the 'Aid, the men, on coming out of the mosque, greet the women, who are waiting for them in a line, one by one)

E) Procedure:

692 623 Jural proceedings in the Rif are conducted in front of the jma'th, personalized by several individuals (in one qanum, that of the Imhauren of the Aith 'Ari clan, by a triumvirate) who meet daily[29] in a central location known to all; under a large tree (usually carob or wild olive), at some water point, or in the mosque. Here the men come with the iziddjifen, and the old and sick men, to sit in the sun, to talk, and perhaps to take a siesta.

695 Procedure is as follows: the plaintiff comes to the area chosen, and, in most cases, both contestants present themselves there, each explaining his reasons without, however, coming to the central point. If he is a stranger, boys and villagers accompany him to the site and there they give the reason for his presence. Ordinarily the question is apt to be settled amicably right there, if it is not an important one; but if this is not the case, for example, and if one of the parties does not agree, the proceedings are extended somewhat longer, as he might request an evaluation by a specialist in such matters, or offer to provide witnesses[30] or other modes of proof; and he sets the time--or [623] one of them asks to swear. The jma'th, e.g. all of those men present (not all the men of the village nor even nearly all of them) lets the

695
623 participants speak, and from time to time, whoever wants to (there is no single judge, and all present have the right to question the litigants) barks out a question or a sentence at them, and another, and another, until, when the contestants get tired, fed up, angry or have no more to say, things get excited, as a result of the loaded questions and confused answers; a certainty pervades the air which further emphasizes the responsibility and even the judging members of the jma'th, for some abandon the defense of the man from their dharfiqth or liff as impossible, while others affirm their suspicions. The first judgment is not long in being pronounced, one of the most outstanding persons of the casually organized assembly (or jury) giving it as his opinion on the matter, and the rest adhering to it. In most instances, on seeing his case unanimously judged (in his disfavor), the individual responsible yields. If he does not, new people come into play and voice their opinions. If the matter is important enough to be a case which smacks of jurisprudence,[31] the meeting held the following Friday (in the mosque, prior to the noon prayer) is devoted in part to going over it again and adding up the greatest number of opinions (pro and con)--but not votes--in order to give wider publicity to the agreement and even to take it down in writing if necessary, if so stipulated.

[212]
[794] If there is written proof, any talib hesitatingly deciphers the documentary evidence, but the members of the jma'th do not let him take a trick (thus showing the power of the layman over the judge??) other than in a very discreet and impartial manner. Sometimes they agree to submit the matter to an arbiter outside the jma'th, for greater impartiality in the decision. At other times they decide to submit the

695 At other times they decide to submit the
696 resolution to the clan council on the next market day; but when the
623 judgment, which is both swift and free of charge, has been rendered, the individual responsible can only comply with the council's decision; and he must do so not only more than rapidly, but virtually explosively, or be sentenced by his neighbors and his peers. If he resists, his only recourse is to take up arms, as everybody else is now after him, and this in itself obliges him to do so. The proceedings are rapid and gratuitous, as aforestated, except if experts are called upon to intervene; they are given an honorarium, the amount of which is determined by the custom of the tribe in question, and consists of such and such a percentage of the value of the appraised object or the object of the litigation[32].

692 Thus, true jural procedure, for the Rifian, is to render public
695 any offense or injury he has suffered, and to gain adherents to his point of view. First his family or kin group wants to intervene on his behalf, then his social grouping (properly: his lineage), and finally his liff, his last recourse. This multiplies the various contingencies and unsuspected turns the case may take ad infinitum, and tends to render useless any reclamations against an offender who is more powerful than the injured party. The latter may not take any action against him, but will often afterwards wait in ambush for him in order to redress the wrong! It is a procedure which.....awakens manliness and courage.....

[671] A good example of the executive procedure in criminal law is the qanun
[613] between dharfiqin[33].

000 Bshara, or procedure of recuperation[34]. (No text here whatsoever: translator's note.)

695 F) Oaths (fragmentary):[35]

In most cases, it is not the plaintiff who must prove his pretensions or denunciations, but the accused, who has to justify himself if the complaint is false. There are cases in which the accused has [562] no defense, such as offenses against women, in which the notion of the latter as minors comes into play. If the accusation of a women against her assailant is sufficient to punish the latter[36], where does one find more protection for the woman? Perhaps the rigor in these matters and 695 839 the fear of accusation by jealous husbands or fear of reprisals have permitted to a certain extent crimes such as rape[36a] etc., which, if not frequent, are nonetheless common enough to have a sanction imposed upon them in defense of the common moral standard.

695 [671] [191] Means of Proof: Testimonies differ from those admitted by the Shari'a. In most cases testimony is invalid unless five members of the accused man's family (i.e. his agnates) are present to swear. They are 695 623 previously selected by him, but the jma'th, who know very well the men constitute its membership, can refuse to admit any of them that it wants [613] to[37]. In serious cases, ten members of the dharfiqth of the accused are required to take oath; they are, however, not chosen by the defendant himself, but by the jma'th, among (translator's italics) the members of his dharfiqth[38].

695 829 181 Thus, if oaths are permitted as means of proof, the number of cojurors varies according to the gravity of the offense; this provides a greater guarantee and shows in yet another way that Rifian society is not individual, but solid and familial; in its concept of collective responsibility, blame or sanctions attach to the group rather than to

A, [This footnote was not included in the notes at the end of this section, p. 229--Analyst]

695 829 [181] the individual, in most cases. It therefore seems natural that the group rather than the individual (contrary to Islamic Law) proclaims its innocence[39].

695 212 [685] Although written proofs are admitted, they are not common, and are always submitted previously to a fqih for his consultation. Also, certain tulba were known to take advantage of their essentially notary function in order to falsify documents (one man even wrote up false Sultan's dahirs, or imperial decrees, and was jailed in Tangier!); and this did not make for any great respect of written proofs in Arabic, a language which in any case the Rifians did not understand. [157] Even today (1935) a Rifian who possesses a document is always looking for people to translate it for him, as he is never satisfied with one man's word and always suspects that the man who drew it up for him either misrepresented him or lied to him. I have known Rifians who want to the French Zone and even to Spain in order to obtain proper interpretations of their personal papers! Only death will separate a Rifian from his r-kwaghadh![40]

695 Conciliation and arbitration are the preferential jural processes in this society, where victory is difficult and defeat is hard; and one is drawn to the idea that what actually takes place is more akin to "horse trading" than to justice, in the European sense of the word.

It seems to me that the collective oath is the Rifian equivalent of the European "word of honor", in its unadulterated sense[41]. It has [619] a social rather than a religious significance, and, in practice, very little ritual; it is carried out in the mosque under the eye of the rival or plaintiff, and of those who were in on the secret, a sufficient action for public demerit in the "Big Ones" (imqqranen)[42]

695 action for public demerit in the "Big Ones" (imqqranen)[42]. The oath
[171] formula, haqq dil-baraka, is distinct from the Arabic formula, although oaths are as important among Arabs as among Rifians[43]. The "Little Ones" (imzzyanen, or minors) do not believe in this nor in anything else, but nevertheless they follow the example of their peers and try to limit themselves to abiding by the decisions and keeping the conventions, although they are usually not the same in both categories.... Proof of this is that if a stranger has to swear, he is obliged to do so in places fixed by local tradition[44].

[562] Men swear during the day, while women swear at night[45]. Jews
[563] were forced to swear by going through the market with packsaddles on their backs[46].

G) Penalties: (fragmentary):

681 Berber law does not admit the penalties which Islamic law does
[171] in order to punish crimes (sic)....Rifian law excludes corporal punish-
[697] ment and deprivation of liberty; there are no jails[49 A], and in this
562 respect a man's dignity cannot be degraded. On the other hand, it
[855] tolerates maltreatment of women, but because of their status as minors,
[861] being in perpetual childhood, and incapable of taking care of themselves; in the same way, the Rifians do not hesitate to beat their children, if necessary, in order to oblige them to follow "the right
[443] path"[48]. Berber women have all the freedom, in truth, that they desire,
[514] and in the Rif they even have their own markets and feasts[49]. The Rifian male does all he can to protect this feminine society of minors, and he does not enter at all within the limits of his women's social activities.

A, [This should read "47" not "49"--Analyst]

223 Nests and young birds are not respected, and are taken just as adults are.

224 In the mountains (Jbil) of the Aith Waryaghar, when a hunter (anigmar, pl. inigmarn) going over snow follows the tracks of an animal to a thicket or cave, he walks around it, leaving his footprints and making a circle in order to show that it is his property and that he will explore it on his return. Any other hunter or party respects this. Any animal which falls within the radius of action of the weapon used[68] is the property of whoever killed it.

671 684 b) Personal Law: If a woman accuses someone of dishonest abuse to her person, her testimony is admitted....A woman who is illegally pregnant pays 50 duros from her own property as a fine. If she was forced against her will, and the man who forced her appears, he pays. If she submitted to him willingly, he and she each pay 25 duros[69]. If she has no property, her brothers or male agnates pay[70].

685 695 c) Fine for Theft inside a House: 50 duros. If there is no proof, five adult and trustworthy agnates of the accused must swear to his innocence[71], at least if they have publicly announced in the market not to make themselves jointly liable.

688 793 d) Whoever fails to provide food for the fqih when his turn comes up to do so must pay 2 pesetas[72].

685 231 e) A herdboy who has animals stolen from him while in dhwara[73] must pay for them if he has not seen them stolen. The same holds true for injuries which the animals might suffer....Whoever does not pasture the animals of his jma'th when his turn comes up pays 2 pesetas and one loaf of bread, and has to give a meal to the person who does it for him, or to the jma'th if no one does so.

[114] 37--The jma'th, contrary to Blanco's statement, had absolutely nothing to do with the selection of cojurors by a man accused of a crime. He selected them himself, among his agnates, and if he did not have enough to fill the full complement, he got the remainder from that neighboring dharfiqth which was most closely related, patrilaterally, to his own.

[114] 38--The accused always chose his own cojurors, and here Blanco has made a serious error. An even more serious error, and one which appears to us almost classic among French writers on the subject, is a persistent tendency to confuse cojurors (izudjen or yuxshin n rimin) with witnesses (rshuhudh). The distinction between the two should be obvious to anyone, but apparently it has not been: if there is a witness or witnesses to any crime (and the Shari'a states that there must be either 12 ordinary witnesses or 2 'udul or notaries public, the testimony of one 'adl being worth that of six ordinary men), there is, ipso facto, no oath; for the accusatory testimony of witnesses always (quite naturally) overrides the denials of the accused and his cojurors. Furthermore, though the number of witnesses and the number of cojurors (in a murder case) are exactly the same, there is another paramount difference between these two categories of persons, wholly aside from the fact that the function of the ones is to accuse and that of the others is to deny: witnesses had to come from a different lineage or different lineages from that of the accused, while the cojurors of the latter were his agnates and thus his fellow lineage mates, aithmas, "his brothers", or aith 'azizi, or ibin 'azizithen, "the people or sons of his paternal uncles". The fact that the same number of individuals, twelve, was needed in each case may or may not have been fortuitous; but, in any event, it seems of entirely secondary importance.

A summary recapitulation of collective oaths (thzaddjith or rimin) as practiced among the tribes of the Central Rif will not be out of place. First of all, if one man accused another of any crime or misdemeanor, and the accused man denied it, they both agreed to go to their cantonal or Friday mosque, or any other mosque named by the plaintiff (izidjith), on the following Friday before the noon prayer so that the accused (izudj or yuxshar n rimin) could take oath. The plaintiff, furthermore, stipulated how many cojurors the accused should bring with him.

[692]

It appears that the number of cojurors was almost always either six (the accused himself plus five agnates) or twelve (the accused himself plus eleven agnates), the former amount of men being required in less important matters, such as theft of irrigation water or of livestock, or damage to the accuser's property, and the latter in cases of murder, as aforementioned. (When Blanco says five and ten, respectively, he is in error as to the exact amount, but correct regarding the proportion and the doubled number in suspected homicides.) Twelve was ordinarily the maximum number of cojurors, and murder the maximum offense necessitating this number, among the members of one tribe; but if an oath involved members of two different tribes, over matters such as large scale land disputes involving tribal boundaries, or intertribal murder cases, the number of cojurors which the accused had to bring was elevated to fifty (the defendant plus forty-nine agnates or fellow clansmen or tribesmen, the latter being far more ready to help out one of their own men in an extra-tribal crisis than in an intra-clan or even an intra-

[114]

695 tribal one). To be able to swear, a cojuror had to be old enough to fast during Ramadan (i.e. to have attained puberty); and women did not swear.

The plaintiff had to be present at the mosque (and each tribe or clan generally had at least one mosque at which it was customary to take oath) when the accused and his cojurors arrived. When the latter arrived, they removed their footgear and weapons, as the plaintiff had done before them. Then the fqih of the mosque asked them what they were going to swear; they told him; and he made each one of them repeat it on the mushaf (Koran) after saying the oath formula "Bi-llahi alladhi la ilaha illa huwa!" (With God, of whom there is none other than He), the accused swearing first. The accused placed his right hand on the mushaf while taking oath, and each of his cojurors, in turn, did the same.

[793]

There were, however, instances in which the mushaf was not employed as a vehicle for swearing; and some say that these instances were more the rule than the exception, and that in them the oath formula was restricted to "Bi-llah" (With God) only. Others deride the practice and say that it was followed only by "ignorant people"; but, even so, the mere fact of its existence tends to place Rifian oaths at more or less of a midpoint between those in the Sus and Western Atlas, where the mushaf was always, without exception, employed, and those of the Middle and Central Atlases, where it was completely unheard of. It is in the latter areas that Berber oaths in Morocco reached their greatest purity and complexity. However, it should be said that in the Rif, unlike the Central Atlas region, the fqih, if the need demanded, repeated the oath as many times as was necessary for all the cojurors to understand it and say it after him; whereas in the Central Atlas, a different official, the anahkam, only repeated it once (the formula there was, in addition, more complicated than the Rifian one), and if any cojuror tripped up over it or got it wrong, the oath was broken; and the same applied if any of a group of assembled bystanders, whose function it was, in effect, to heckle the cojurors, succeeded in making him falter or stumble over the words, by yelling "'Auh! 'Auh! 'Auh!" (In the Rif, there was no such heckling, even though oaths, for obvious reasons, had to be taken publicly.) A further distinction was that in the Central Atlas, all important oaths were taken not at mosques, but at saints' tombs. There were many other differences in detail as well, such as number of cojurors required for various offenses and in the ramifications of the question of who pays in the event that some cojurors were either recusant or missing; but finally, and perhaps most relevant of all, the oath system in the Rif, encompassing fewer tribes and far less territory than in the Atlas, showed a far greater tribe-to-tribe uniformity.

695 184 171

To return now to the oath itself: after it was taken, the fqih, who had witnessed it, drew up a document (tibriyith, "letter") in Arabic certifying that the defendant, whom he named, had sworn on such and such a date to the effect that he had not committed such and such a crime: he (the fqih) then appended the names of the latter's cojurors, as well as that of the plaintiff. Finally, he gave this document to the defendant so that the latter could produce written evidence of his innocence.

695 793 212

695 [184] It was, and is, universally believed that anyone who perjured himself at oath would suffer dire consequence; either he, or some member of his family, or his livestock, would be struck dead or blind or dumb by God shortly thereafter, or, if not, that some other almost equally awesome calamity would befall him; and informants cited numerous examples. And: if either the accused or any of his cojurors failed to turn up at the mosque to take oath at the time stipulated (without a valid excuse for not doing so), it was the accused who had to pay the fine for whatever damages he had caused the plaintiff, as his non-[184] appearance was sufficient proof of his guilt. The same was true if [191] one or more of his prospective cojurors refused to swear with him; unlike in the Central Atlas, he could not obtain substitute cojurors, through sacrifice--the Rifian oath system was simpler and more inflexible. And if, of course, the plaintiff failed to show up, there was no oath at all. The accused or any of his cojurors could, however, be legitimately excused (as could the plaintiff) in the event that they had been unavoidably detained or prevented from appearing through illness, etc., in which case the oath was postponed until the following Friday or until such time as the individual in question was well enough to swear.

000 [114] 39--Here Blanco contradicts a previous assertion he made by saying that in this instance Islam and customary law are at one, and that the former puts the responsibility on the individual (which is true as far as oaths are concerned, but highly questionable in many other respects), while the latter puts it on the group!

[157] [181] 40--Blanco develops, and very amusingly, his ideas regarding the Rifian and his perennial mistrust (shimta walu, WALU CONFIANZA!) of his fellow man and of the world around him in a series of humorous papers (Analisis Espectral del Rifeño, Hospitalidad Rifeña, La Garrota Berberisca and Del Gesto en el Islam), all unpublished, which most unfortunately cannot be fitted into the framework of the present compilation.

[191] [577] [114] 41--This is very true; but only in part, for where the author's notion bogs down is in the simple fact that the European "word of honor" is essentially conceptualized as individual rather than collective. One may, to be sure, speak of a "national word of honor", among Europeans, but again this is personified individually through heads of state, etc. Thus, phenomenologically, the European "word of honor" and the Berber collective oath are two rather different kettle of fish, despite a certain parallelism in their objectives.

[114] 42--Blanco's meaning is not quite clear; but, if we understand him aright, why should the imqqranen have either depreciated the value of collective oaths or themselves be depreciated in turn for having to swear? If a defendant can legitimately get powerful and influential cojurors for himself, so much the better for him; but then again, in the Rif, an amghar, though respected by his own constituents, was considered no less bullet-proof than anyone else by his enemies....When Blanco refers to "those who were in on the secret", he presumably means "cojurors".

property in that belonging to him, in conformance with traditional law.[25]

Those who attended the present (act) brought their testimony to the above according to the requirements of the interested parties. --In the middle of Jumad al-Awwal of the year 1336 (February 27, 1918). --The 'adl, Muhammad bin Muhammad bin al-Hajj al-Warnuri.--Another, whose name is not known.--Another, Muhammad bin Sidi 'Abd al-Qadir al-Ghamri.

B) Commentary:

The social disintegration which Rifian society has reached is proven by these individual agreements between dharfiqin (Blanco: note 1, corresponding to text of qanun). In the face of helplessness or irregular functioning of higher-level associations, the poor tribesmen, before falling into complete anarchy, hastened to conclude an agreement with a neighboring group in order to attenuate that anarchy, succeeding in the hard struggle for life on a poor soil. These agreements thus formed true islets of irregular and variable peace, anchored in functional (sic) anarchy.

The necessity of agreements between lower-level lineages, who were abandoned by the rudimentary organization, obeyed, according to my understanding, those most curious periods which followed the public declaration of anarchy in the suq, when one powerful group managed by force to sustain the punishment, breaking the truce.

As the dispute was generalized between two preponderant rivals, the unaffected groups, before falling into anarchy, and with that notable instinct of self-defense, worked to bring about these agreements,

4. QANUN OF THE JAMA'A OF IMHAWLEN[31] (AITH WARYAGHAR):

A) Qanun:

692 621 614 [695] Praise be to God. Those of the jama'a of Imhawlen appeared for judgment in front of both the undersigned notaries, and presented themselves to us: al-Hajj Shu'aib; Muhammad bin Muhammad bin Misa'ud and his brother Muhammadi; Qaddur bin ask-Shaikh Muhammad bin 'Abd as-Salam and his brother Muhammad; al-Muqaddam Muhammadi bin Muhammad bin Ahmad and his brother 'Allush; 'Abdallah bin al-Hasan; Muhammad bin 'Azzuz; Hammu bin Muhammad bin 'Ali and his uncle Shu'aib bin Shu'aib; Muhammad bin Muhammad bin Muhammad bin Musa; Muhammad bin Muhammad bin Ahmad bin al-Hasan; Muhammadi Amzzyan; Awlad al-Muqaddam Shu'aib bin Muhammad bin Shu'aib and their brother Hammu; Muhammadi bin al-Muqaddam and his brother 'Umar[83A], and their brother Hammu. 621 692 673 All these persons are of the jama'a of Imhawlen, and all appeared for judgment (at the present act), agreeing in behalf of what is good and advantageous to the making of the agreement, with respect to the hannash (evil doers; also snake charmers), to robberies and all acts of lowliness and ignominy (Blanco: note a).

685 689 In case any thief or smuggler should be caught in flagrante delicto, he must pay 10 mithqals in money (Blanco: note b).

695 Regarding the above, the interested parties testified. The Murabit Si Muhammad Dardushi and the Murabit Muhammad bin 'Abd al-Qadir al-'Azizi attended the present act with them. Whoever changes or alters this agreement must answer to God, who shall decree his punishment. Those who commit misdeeds (on earth) shall know the change in the other life (Blanco: note c).

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A, ["83" apparently does not refer to any footnote here and therefore should be disregarded--Analyst]

695 Valid and complete testimony in virtue of which both instrumental witnesses bring testimony against them.

000 (Two illegible signatures follow.)

692 At the same time, they agreed that whoever should commit any of the wrongs (literally, "things") expressed herein, the case, together with him (the man who committed it) shall be taken to Sayyid Mhammad bin Musa[32] and Sayyid Ahmad bin 'Ali[33] (Blanco: note d).

685 Whoever enters an orchard with intent to rob shall pay 20 685 uqiyyas. If a bull should start to trample property adjacent to that 672 of its owner, the latter shall pay one peseta.

The guarantors (of the fulfillment of this agreement) are three. The Muqaddam Muhammadi bin Muhammad bin Ahmad, Hammu bin Muhammad bin 'Ali bin 'Abdallah, and Muhammad bin 'Umar bin Ahmad bin al-Hasan (Blanco: note e).

[681] Regarding the amount (of the fines imposed) with respect to orchards in cases in which they are injured by animals, this will be donated to their mosque (Blanco: note f).

If they should break a branch of a fig or other tree belonging to anyone, the owner of the animals will pay 20 (uqiyyas).

000 A signature in Arabic follows, which appears to be al-Bu Jma' bin Muhammad (signed).

B) Commentary:

671 The reading of this qanun clearly indicates in its first para- 621 graph the names of those who have established it, all of them members of the jma'th of Imhauren, bordering the Island of Alhucemas, in the 621 plain of the same name. Every two or three headmen or iziddifen (sing., 613 554 aziddif, "head") are the visible representatives of the lineage groups

623 182 own circumstantial interest, their councils and the agreements fallen back upon in them lacked that breadth and generality which would have been needed for a longer duration in any jural operation. In a short time, new, unspecified cases or prejudice among the influential men brought their usefulness to an end and necessitated their being redrafted, in which previous experience, the analysis of which was discarded in order to resolve the question of the moment, did not play a part.

671 212 For this reason written laws in the Rif are rare, of only relative value and minimal jural operation, which did not go beyond the time it took the minors (author's italics), the small ones, to forget the announcement of the majors (author's italics) by the criers in the markets to reach their hands.

671 They do not have the severity of European law which, even though drafted in moments of emotion, gathers up and encloses in itself principles of general usefulness, a usefulness which does not necessarily exist at the time of codification but which comes into play with possible and presumable variations which later times can introduce, by which, with the prolongation of their legal operation, their disclosure and exemplarity increase, resulting in the slow but sure advance of society.

5. QANUN OF THE JAMA'A OF TAMASINT (AITH WARYAGHAR):

671 695 621 623 A) Qanun:

(Blanco: paragraph a) Praise be to God.--Copy.--In front of both witnesses testifying at the present act, those of the jama'a of Tamasint as-Sifli, Lower Thamasind, appeared for judgment, including:

671 Muhammad bin Muhammad; at-Talib Sidi Shu'aib bin al-Faqir Misa'ud;
695 Misa'ud bin Muhammad; Muhammad bin Muhammad al-'Attabi; 'Ali bin
621 al-Faqir Muhammad Azifzaf; Muhammad bin Muhammad of Ait Bu Bakr;
623 Misa'ud bin Muhammad; Sa'id bin 'Azzuz; Muhammad bin Muhammad; Muhammad bin ash-Shaikh 'Ali; and Muhammad bin Muhammad bin 'Ayad Amti; and giving respect to 'Ali bin 'Azzuz bin Muhammad bin 'Azzuz, (recognizing) that he is their shaikh, and, by the same token, the shaikh of the jama'a of Tamasint.

685 (Blanco: paragraph b) At the same time, regarding the orchards
821 and gardens, they agreed that if anyone be detained (while stealing) during the night, (he shall pay a fine of) 10 mithqals, and if he should do so during the day, he shall pay 50 uqiyyas. If he should steal cereals or fruits (literally, "figs"), he shall be punished in the prescribed manner with respect to orchards. If he should steal during the day, he shall pay 50 mithqals in money. If he should die
685 during and because of committing theft, there shall in no case be any indemnity to be paid.

682 (Blanco: paragraph c) If anyone should unsheath his dagger (with intent to attack), he shall pay one duro.[38] If he should point his rifle at someone of the aforementioned jama'a, he shall pay 10 mithqals to the shaikh.

685 (Blanco: paragraph d) If (the entrance) of (his) animals, such
672 as goats, cattle, sheep and donkeys, should take place in the cereal (fields) of his neighbor, he shall pay 10 muzunas.

574 (Blanco: paragraph e) If someone should spend the night as a
689 guest in the jama'a of Tamasint, all shall go to where he is staying

574 (perhaps to deliver their portion of the expenses necessary to maintain
689 the guest), and in case one of them is opposed to going, he shall be fined a goat or one duro.

695 (Blanco: paragraph f) Valid and complete testimony. Whoever
784 should change or alter this agreement shall answer to God. Both the
693 undersigned notaries know, personally and by name, all the parties who effected the present agreement.

685 (Blanco: paragraph g) In case anyone should open a pond or an
312 irrigation ditch (thus letting out the water), he shall be fined one duro for the pond and one mithqal for the irrigation ditch.

686 (Blanco: paragraph h) Regarding the contract with the schoolmaster, if anyone should be opposed (to contributing his share to the scholmaster's annual ration of barley), he shall be fined 10 uqiyyas.

689 (Blanco: paragraph i) If those mentioned earlier in the present agreement should assemble and agree on some useful matter, and if in this case there should be anyone (of the members of the abovementioned jama'a) who is opposed (to carrying it out), he shall be fined one duro.

622 (Blanco: paragraph j) Their shaikh is 'Ali bin Muhammad bin 'Azzuz. Everything that he orders (literally, "says") must be done
693 (literally, "will be"). The parties attending know the value of the present agreement, and in virtue of this, both the undersigned notaries bear witness that they are in a perfect state of legal capacity (i.e. of sound minds and memories) (in order to be able to effect the present
805 agreement) and that they know them. On the first (day) of Safar al-Khair of the year 1285 (May 24, 1868).

000 The slave of God--may He be glorified--Muhammad al-Khattabi and 'Umar bin Muhammad, etc.

682 limits of his land (i.e. within the limits of the clan territory of the Bani 'Abdallah) shall pay (a fine of) 2000 duros; (this shall be the fine) if he committed the deed alone; but if several (men) committed it, each one (shall pay a fine of) 2000 duros. Whoever should take
687 justice into his own hands (literally, "ransacking to collect a debt")
683 shall pay 50 duros, and the same for whoever should attack another on
689 the path. Whoever should provoke an incident in the market (shall pay) 10 duros.

683 (Blanco: note d) Whoever should unsheath a dagger, making it glitter, with intent to attack (literally, "injure"), shall pay 5 duros. Whoever should wound the head of another with stones (shall pay) 5 duros. Whoever should attack another with a stick, causing blood to flow and provoking a scandal, (shall pay) 15 duros, and if he should not cause blood to flow, (he shall pay) 10 duros.

613 (Blanco: note e) Whoever should come to the defense of one of
681 his brothers (i.e. agnates) or of any other person, as is customary among those of the same party (i.e. same lineage), (shall pay) 5 duros.

681 (Blanco: note f) No request (for pardon) shall be listened to, nor shall mercy be granted to any of those who have incurred the above (punishments).

805 (Blanco: note g) For the application of what has been made
443 manifest above, it shall be considered that Tuesday begins at dawn and ends with the sunset; this is to apply to them (those of the Bani 'Abdallah) and for strangers (regarding the application of the above), market (day) shall be considered as having a duration of three days.

695 With regard to the above, the testimony (which both 'udul)
693 registered took place, the witnesses being in a perfect state of legal

695 693 capacity (i.e. of sound mind and memory) in order to testify.

(Blanco: note h) If, regarding a murder, there is brought sufficient proof (against the guilty party), the abovementioned fine shall be imposed upon him, and in case sufficient proof does not exist, he shall swear (for acquittal).[48]

805 443 782 (Blanco: note i) Regarding the abovementioned beginning (i.e. on Tuesdays), it is ended at the hour of the 'isha (i.e. at the dinner hour or hour of the sunset prayer). Amen.

805 000 On the sixth day of Ramadan the Magnificent of the year 1335 (June 26, 1917). Servant of his God, may He be exalted, Muhammad al-Ghalbzuri, may God be benevolent toward him, amen. (Signature). Servant of his God, "Abd as-Salam bin al-Hajj Muhammadi al-Ghalbzuri, may God be benevolent toward him. (Signature).

671 692 693 000 Legalization by the qadi. Praise be to the One God. (Both 'udul) have put down its contents, which are accepted and to which I give faith. Servant of his God, Muhammad bin 'Umar at-Tuzani, may God be benevolent toward him, amen. (Signature).

B) Commentary:

671 This qanun manifests in a clear way how social law is made among Rifians: where the legislators gathered to agree on it, how it was made public, whom it obligated, the jurisdiction in which it was exercised, the objective sought and the means of attaining it.

It enumerates the crimes and their sanctions, it distinguishes perpetrators and accomplices, provokers and auxiliaries, natives and 000 stranger. It eschews pardon, it demands proof and it shows the reality of the social unit, the "fraction" (author's italics--the translator

A, [See p.306-- Analyst]

671 Paragraph e: This paragraph distinguishes principals from accomplices or auxiliaries.

671 181 Paragraph f: A virile and rural society distrusts the veracity of the so-called humanitarian sentiments, closing its doors to the intrigues which, under such a mask, provoke influential individuals to save their allies and other interested aspirations which mock the objectives that the law, to which they freely gave themselves, pursues.

671 609 628 Paragraph g: We have here a precise and exact detail, an excellent delimitation of a truce, a recognition of Rifian public law (i.e. jural procedure) and interest protecting the stranger, to whom this law guarantees a wide and sufficient time of commercial activity and a prudent warning that he leave an open field to the fierce internal bloodfeuding. We have here a manifestation of the social unit, 671 609 614 the clan, which shows us its reality and consistency, which recognizes a common interest and one superior to its own intestinal vendettas; and this permits it to guarantee to the neutral, to the stranger, a free passage and activity throughout its whole territory (author's italics).

671 695 Paragraph h: Two important additions are made here to the hurried first draft. It is necessary, first, to guarantee the person of the accused against the passions of the moment, the outward appearances, the ill-will and the outright suspicions, by means of evident proof (author's italics), offering him the means of avoiding such passions by taking oath. And in the second addendum (Paragraph i) they list, furthermore, and completing it, the duration of the truce or time of peace.

671 component lineage groups, for the practices of such groups tend to
614 disintegrate them through the violent opposition of the individual
613 interests of their members. The clan officiates as a soothing in-
182 fluence on the disorderly appetites of the lineages, patrilineally and patrilaterally united by the strong tie of blood.[51]

671 7. QANUN OF THE AITH 'ADHIYA[52] (AITH WARYAGHAR)
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782 A) Qanun:

Copy.--Praise be to God. In the presence of both the undersigned notaries, all those of Bani 'Adhiya (properly, Bani 'Aziya) made testimony, both adults and minors (author's italics) who constitute the jama'as of the Ait Tazurakht, Ait ar-Rabda, Ait Kharbush, Ait Mnudh, Ait Ajdir, Ait (illegible)[53], Ait Ighmiren and Ait Fars, that they, when they went together to the tomb of the saint Sidi al-Hajj 'Umar, in ar-Rabda, sacrificed two bulls as an offering to him[54], (on the occasion of which) an act of reconciliation took place between them, with respect to murder, theft, pillage and other acts of this
682 kind. In case any of them should kill another, then all the above-
613 mentioned villages of the Bani 'Adhiya shall unite against him and burn his estate and that of his brothers (i.e. agnates); they shall drag them from their houses and exact from them a fine of 1000 duros.
682 This (shall be the case) if he should have killed outside the market[55]
443 or without witnesses (literally, "without a meeting"). In case he should kill someone in the market or in front of witnesses, then the procedure shall be as stated above, all uniting against him, burning his estate and that of his brothers (i.e. agnates), and taking from them, as a punishment against him, a fine of 2000 duros.[56]

through allegation, no litigation related to the water cited above. If any of them should demand the continuation of the debate through the presentation of proofs or arguments, everything would be null and void, for neither the present nor the future provides for this. Both parties have renounced all arguments, both public or private, which they could allege, as well as all the successive declarations (or reclamations) which could be brought forth to impede putting this agreement into effect.

A valid and executive arrangement. Both parties attending know the value of the present act, and, by virtue of it, the undersigned notaries, who know them to be in a perfect state of legal capacity (who know them to be of sound mind and memory), make their testimony. On 28 Qa'da al-Haram of the year 1250 (March 28, 1835).

A signature follows, illegible and signed. Another illegible signature follows the first.

Legalization by the qadi: Praise be to God.--I give faith (or testimony) to the above after both 'udul (notaries) have done so.--Servant of his God.--Signature (of qadi) illegible.

18. A SHAHADA ON WATERS: TRANSLATION:

Praise be to God.

Both the undersigned notaries compile the testimonies presented by the respected 'Abd al-Qadir bin 'Umar al-'Alawi, the honorable 'Umar bin 'Ali, the respected Talib 'Isa Ajtuh, and the honorable Muhammad al-'Arusi, all of the Bani Waryaghal, in which they testify (the testimony of God is the perfect one) that the water ditch, (the property) of 'Abdallah bin Ahmad Amhawil al-Khattabi al-Waryaghli[175]

695 is to be found situated above the ditch of 'Umar bin Yusif al-Waryaghli.
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[693] This is what the witnesses of the present (act) certify without there being (any) doubt existing in it. A complete attestation.

693 The undersigned notaries who have compiled (the testimonies which
695 these individuals afforded) from them testify that the latter are in a perfect state of legal capacity (i.e. of sound mind and memory) to testify, and they know them (i.e. personally).

[805] On the 21st day of the blessed Sha'ban of the year 1150 (December 13, 1737). Two illegible signatures follow.

19. PURCHASE AND SALE OF AN IRRIGATION TURN: TRANSLATION:

Praise be to the one God.

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432 The Qa'id Sulaiman bin Muhammad al-Waryaghli al-Khattabi al-Ajdiri[176] buys, with the power and force of God, from the one who sells it, Siddiq bin Muhammad bin Siddiq al-'Abdallawi[177], one-fourth (of a part) of the irrigation ditch of Bulma'iz, (in his turn) by day or by night, his turn reappearing about (once) every nine days; on some occasions
432 he gets it during the day, and on others at night. A valid, definitive
[435] and firm purchase, so much down, without conditions of resale or op-
[436] tions (to anything) other than that assigned here), for a price the sum of which is 100 duros, in Spanish money (i.e. 500 pesetas). This amount the abovementioned seller has taken from the abovementioned buyer, thus recognizing it in front of both witnesses instrumental to the present act, freeing the buyer from it, who took over his purchase with complete possession, occupying it in his place of ownership in conformity with the traditional law and the right of rehibitory action

691 and, second, diligence, both of which are qualities also needed by
224 judges of The Law[189], who, in order to manipulate their terrible
692 weapon, the pen, need attitudes of repose, and sheltered places where they can keep their books and papers and even hide their faces.

224 Incidents which arise during hunts are examined most often
578 by passing them to the mulu' of the same hunting party. He settles
627 them on the spot, giving his judgment on the matter, and in the
614 event that the question must go up in front of the imgharen, the latter limited themselves to doing their duty and to putting into effect the opinion of the mulu', a natural arbiter.

224 Thus it had to be; and if, for example, there was a hunting
578 incident in the snow, the best possible proof of which was individual
627 tracks or footprints, this required, on the part of the judge, dili-
695 [132] gence in copying or studying before it was rubbed out.

224 The usual sanction, all over the Rif, for hunting incidents
681 is a fine of 25 pesetas.[190]

[128] For the examination of different cases which tend to come up often, we have grouped them in the following categories, which facilitate consultation even though they are somewhat arbitrary.

F) Game:

223 1) A bird knocked down in flight within the range of vision
671 of the hunters belongs to whoever hits it, until, having hit the ground, it flies up again, in which case, and if it is not wounded again, it belongs to whoever catches it.

223 2) If a bird or animal is hit simultaneously by several hunters,
224 it belongs to whoever catches it; and if several people should catch it
671 at once, it is divided among them (Aith 'Ammarth).

000 223 224 622 578 671 [191] at once, it is divided among them (Aith 'Ammarth). In the Sanhaja Srir, the mulu' sometimes resolves the question of ownership by hefting the sticks of those who are disputing and giving it to the man whose stick weighs most.

3) Animals or birds disputed about without sufficient proof of ownership are taken away from both parties and handed over to the mulu' (Ibuqquyen).

671 223 224 411 4) An animal or bird hit both by a shot and by a stick belongs to the man with the stick if it falls less than twenty steps from where the latter threw, and to the man with the gun if the distance is over twenty steps (Aith 'Ammarth).

671 223 5) A bird hit by a shot and caught by another hunter in whose vicinity it falls belongs, if it falls down dead, to the man who fired the shot, and to the other man if it is only wounded and if he pursues it and finishes it off. If there are no witnesses, whoever gets it [572] must say if it fell down alive or not, and an oath to this effect can [695] be demanded of him (Sanhaja Srir).

671 223 224 6) Any bird or animal which has fallen outside the range of vision of a hunter belongs to whoever finds it if he is going hunting also; and if he is not, it belongs to whoever wounded it (in the same way that in the method of acquiring property by vivification, this case shows a recompense for physical effort, denying rights of recovery to a goatherd or a traveler whom luck might favor instead of the hunter)

[201] 7) A bird or animal sitting in a thicket or in its den belongs to whoever discovers it; and the latter must make his discovery known by raising his stick and crying out "l-'adaw", these both being signs of recovery (Ibuqquyen and Aith Waryaghar).

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825 the traps and is stuck. In other tribes, instead of a reed tube, dried figs with flies are tied to the traps.[197]

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231 L) Ferrets:

In hunting with ferrets, these sometimes stay in the burrows of the game for several days and eat the game. In order to get a ferret out of the hole, its owner usually takes a chicken to the mouth of the den and makes it squawk; and the ferret is attracted by the noise. If he does not succeed through using this technique, the owner puts the chicken in a leather bag, in which it is kept, with the bag open, beside the entrance. When the ferret comes out, it enters the bag or stays crouched beside it.

Ferrets are also employed in hunting jackals and wolves (sic). The hunters prepare snares at the entrance of the animal's lair. They put the ferret there, and it is held down by its testicles. Aside from the snare already prepared, the hunters are then ready to finish the jackal off with blows from their sticks as it comes out.

M) Damages:

A hunting party is not responsible for damages which the individual hunters (Ar. mruyah, R. ingmarn) might inflict in garden, orchards, or beehives, etc., but the latter are. The injured party, if he does not accuse a specific person through not knowing who did the damage, can demand that the hunting party denounce the guilty individual, and if it does not wish to do this, it must declare, by name, those who passed closest to the site of the damage occasioned.[198]

[681]
[695] If the latter confess, they pay a fine, and in case of denial, they are obliged to swear that they have not done the damage and that they do not know the man or men who did.